

Claimant alleges that she suffered an accidental injury to her right shoulder on July 15, 2006, while loading band uniforms onto a truck for respondent. The uniforms were to be delivered to a local high school that same day. Claimant testified that she told her supervisor, Greg Weiter (respondent's plant manager) of the injury the next day. Claimant's testimony is called into question at several points. Claimant testified that on the

date of accident, she was working alone loading the uniforms. Mr. Weiter and Imogene Cote (a co-worker) testified that the uniforms were never loaded by only one person. Several people regularly participated in the activity.¹ Mr. Weiter also denied being told of the accident. Plus, both Ms. Cote and Deborah Ritt (an employee in respondent's laundry department) testified that while claimant did tell them of her shoulder hurting, claimant never told Ms. Ritt the injury was work related and claimant never told either woman that she reported the problem to any member of respondent's management force. Ms. Ritt did testify to suffering a shoulder injury herself while working for respondent. When she reported the problem to Mr. Weiter, he filled out an accident report and cooperated in Ms. Ritt's obtaining medical treatment with her chiropractor.

Claimant testified to seeking medical treatment for the shoulder injury within two to three days of the injury. However, the first medical treatment noted in this record was dated August 31, 2006, approximately 6 weeks after the alleged injury. Those medical notes from the Shawnee County Health Agency (SCHA) contain information that claimant had shoulder pain, but fail to note anything about a work-related injury.

Claimant testified the uniforms in question were blue and white, the colors of Washburn Rural High School. However, at claimant's deposition taken earlier, claimant was unable to identify the colors of the uniforms.² Additionally, Mr. Weiter introduced records from respondent indicating the blue and white uniforms of Washburn Rural were delivered to the school on June 29, 2006, and there were no high school band uniforms delivered on July 15, 2006.

In workers compensation litigation, it is the claimant's burden to prove his/her entitlement to benefits by a preponderance of the credible evidence.³

The burden of proof means the burden of a party to persuade the trier of fact by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record.⁴

This Board Member finds that claimant has failed to prove that she suffered the alleged injury as claimed. The method of injury is not credible, as both Mr. Weiter and Ms. Cote dispute claimant's testimony that she was loading the uniforms alone. Additionally, the medical records of SCHA contain no history of a work-related accident,

¹ P.H. Trans. at 45; Cote Depo. at 24.

² P.H. Trans. at 23-24.

³ K.S.A. 2006 Supp. 44-501 and K.S.A. 2006 Supp. 44-508(g).

⁴ *In re Estate of Robinson*, 236 Kan. 431, 690 P.2d 1383 (1984).

and were created approximately 6 weeks after the alleged date of accident, rather than two to three days as testified to by claimant.

K.S.A. 44-520 requires notice be provided to the employer within 10 days of an accident.⁵

Claimant testifies to having told Mr. Weiter of the accident the next day. Mr. Weiter denies being told of any accident. Additionally, when claimant told Ms. Cote of her shoulder problems, Ms. Cote inquired whether claimant had told Mr. Weiter. Claimant told her that she had not done so. Mr. Weiter testified that the first time he was advised that claimant was pursuing a workers compensation claim was in November 2006 when he received a letter from claimant's attorney. This Board Member finds that claimant has failed to satisfy the requirements of K.S.A. 44-520 in that notice was not provided within 10 days of the accident. Therefore, the January 4, 2007 Order Denying Compensation by the ALJ should be affirmed.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.⁶ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2006 Supp. 44-551(b)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

WHEREFORE, it is the finding, decision, and order of this Appeals Board Member that the Order Denying Compensation of Administrative Law Judge Brad E. Avery dated January 4, 2007, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of February, 2007.

BOARD MEMBER

c: Frank D. Taff, Attorney for Claimant
John F. Carpinelli, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge

⁵ K.S.A. 44-520.

⁶ K.S.A. 44-534a.